



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR-DR

Introduction

This hearing was initiated by way of a Direct Request Proceeding but was reconvened as a participatory hearing.

The reconvened hearing was held to consider the Landlord's application for an Order of Possession for Unpaid Rent.

The Manager stated that on October 12, 2020 the Dispute Resolution Package was placed under the door of the rental unit. The female Tenant stated that she received these documents on October 12, 2020 and that she gave a copy of them to the male Tenant.

As the female Tenant acknowledged receiving the Dispute Resolution Package, I find that it was served to her on October 12, 2020, pursuant to section 71(2)(b) of the *Residential Tenancy Act (Act)*. As the female Tenant stated that she gave a copy of the Dispute Resolution Package to the male Tenant, I find that he was served pursuant to section 71(2)(c) of the Act. As the male Tenant was served with the hearing documents, the hearing proceeded in his absence.

On September 11, 2020 the Landlord submitted evidence to the Residential Tenancy Branch. The Manager stated that this evidence was served to the Tenant with the Application for Dispute Resolution on October 12, 2020. The Tenant acknowledged receiving evidence from the Landlord, and it was accepted as evidence for these proceedings.

On December 15, 2020 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that on December 15, 2020² she sent this evidence to the email address provided by the Landlord in the Application for Dispute Resolution. The Manager stated that this evidence was not received. The Tenant submitted no evidence to show that she sent the evidence to the aforementioned email address.

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure require respondents to serve evidence to an applicant not less than seven days before a hearing. The Tenant did not comply with this deadline, as it was not emailed to the Landlord until two days before the hearing.

Section 88 of the *Act* outlines various ways in which evidence can be served. The *Act* does not allow service of evidence by email. In December of 2020 service of evidence by email was not permitted as a result of the COVID-19 pandemic, although it had previously been permitted during the state of emergency. As the Tenant's evidence was served by email, I cannot conclude that it was served in accordance with section 88 of the *Act* or any other permissible method of service.

As the Manager did not acknowledge receipt of the Tenant's evidence and the Tenant submitted no evidence to establish that it was received, I cannot conclude that the Tenant's evidence was served to the Landlord pursuant to section 71 of the *Act*.

As the Tenant has failed to establish that her evidence was received by the Landlord and the Landlord does not acknowledge receiving the evidence, it was not accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth at these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent, pursuant to section 55 of the *Residential Tenancy Act (Act)*?

Background and Evidence

The Landlord and the Tenant agree that:

- This tenancy began on December 18, 2019;
- They had an oral tenancy agreement and never signed a written agreement;
- The Tenant agreed to pay pro-rated rent of \$310.00 for December of 2019;
- The Tenant agreed to pay monthly rent of \$775.00 by the first day of each month; and
- The Tenant agreed to pay a security deposit of \$387.50.

The Manager stated that the Tenant paid \$600.00 on December 18, 2019. He stated that \$310.00 of this payment was applied to pro-rated rent for December of 2019 and the remaining \$290.00 was applied to the security deposit, leaving a balance owing on the security deposit of \$97.50. He stated that the Landlord did not collect a pet damage deposit.

The Tenant stated that she paid \$800.00 on December 18, 2019. She stated that \$310.00 was applied to pro-rated rent for December, \$387.50 was applied to her security deposit, and the remaining \$102.50 was applied to the pet damage deposit of \$387.50 she agreed to pay, leaving a balance owing on the pet damage deposit of \$285.00.

The Tenant stated that she received a receipt for the \$800.00 she paid on December 18, 2020 and that she submitted a copy of the receipt to the Residential Tenancy Branch. (It was not accepted as evidence for these proceedings, as explained in the introduction.) The Manager stated that the Tenant received a receipt for the \$600.00 she paid on December 18, 2020, although it was not submitted in evidence by the Landlord.

The Manager stated that no rent was paid after December 18, 2019. The Tenant stated that she paid the following amount after December 18, 2019:

- \$400.00 in cash on December 23, 2019;
- \$800.00 in cash on January 05, 2020, \$350.00 of which was for the pet damage deposit;
- \$800.00 in cash on February 01, 2020;
- \$800.00 in cash on March 01, 2020; and
- \$800.00 in cash on April 07, 2020.

The Tenant stated that she paid no rent after April 07, 2020. She stated that she began paying her rent in cash after December 18, 2019 because her bank account had been compromised.

The Tenant stated that the person she paid all of the aforementioned cash to would not provide her with a receipt. She stated that she asked another person who works for the Landlord to provide her with receipts and he complied with her request, although he did not sign any of the receipts provided. The Tenant stated that she submitted copies of these unsigned receipts, although I have not considered them during this adjudication as they were not accepted as evidence for these proceedings.

The Manager stated that a repayment plan for all of the outstanding rent was placed under the Tenant's door on August 25, 2020. He stated a copy of this repayment plan was submitted as evidence by the Landlord, although I was unable to find this document that was allegedly submitted. The Tenant stated that she has never received this document.

The Manager stated that on July 01, 2020 the female Tenant was personally served with the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that is the subject of these proceedings, which is dated July 01, 2020. The Manager stated that the Tenant was also served with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities in June of 2020, however that Notice is not the subject of these proceedings.

The female Tenant stated that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities which is dated July 01, 2020 was personally served to her on July 09, 2020. She stated that she was also served a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities in June of 2020.

The Tenant stated that she did not bring a copy of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities with her to the hearing so she is not certain when it declares she must vacate the unit. The Ten Day Notice to End Tenancy for Unpaid Rent or Utilities which was submitted in evidence by the Landlord declares that the unit must be vacated July 10, 2020.

The Tenant stated that she did not dispute the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that is the subject of these proceedings.

Analysis

Section 26(1) of the *Act* requires tenants to pay rent to their landlord.

Section 26(2) of the *Act* requires a landlord to provide a tenant with a receipt whenever rent is paid in cash. This is to provide a tenant with the ability to establish that rent is paid if payment is ever in dispute.

When a landlord regularly provides receipt for cash payments there is an expectation that a tenant will produce a receipt for every cash payment that has allegedly been made. When a tenant is unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a cash payment has not been made.

On the basis of the undisputed evidence, I find that the female Tenant was provided with a receipt when she made her first payment on December 18, 2019. As the Landlord contends that no payments were made after December 18, 2019, there can be no reasonable expectation that the Landlord would provide a receipt for a payment that was allegedly not made. I find that the receipt provided for the payment made on December 18, 2019, establishes that the Landlord is inclined to provide a receipt when payment is made.

I find the female Tenant's testimony that she paid \$3,600.00 in cash between December 23, 2020 and April 07, 2020 lacks credibility. I find her testimony lacks credibility as she was not required to pay any additional rent for December of 2019; she was required to pay \$3,100.00 in rent for the period between January 01, 2020 and April 30, 2020; and she only owed an additional \$285.00 for her pet damage deposit, which is \$3,385.00. If I were to accept the female Tenant's testimony that she paid \$3,600.00 during this period, I would have to accept that she overpaid her rent/deposits by \$215.00, which is uncommon.

As it is essentially impossible for a Landlord to refute a submission that rent was paid in cash, I find that the female Tenant has some obligation to corroborate her testimony that rent was paid in cash. In these circumstances, the female Tenant submitted no such corroborating evidence, such as proof of how/when she obtained the cash or a witness statement.

In adjudicating this matter, I have placed little weight on the female Tenant's testimony that she has unsigned receipts from an agent for the Landlord who is not the person who received her alleged cash payments. Without evidence from this individual to explain why he would issue a receipt for money he did not receive; I find this testimony lacks credibility. I also find unsigned receipts to have little evidentiary value even if I were able to view them, as they are not signed and could have been written by anyone.

For all of the aforementioned reasons, I favour the testimony of the Manager, who attests that no payments were made after December 18, 2019 over the testimony of the

female Tenant, who attests rent was paid for the period between January 01, 2020 and April 30, 2020.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant. As I have accepted the Manager's testimony that no rent was paid for the period between January 01, 2020 and April 30, 2020, I find that the Landlord has the right to end this tenancy pursuant to section 46(1) of the *Act*.

On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was personally served to the female Tenant sometime between July 01, 2020 and July 09, 2020.

On June 24 Ministerial Order 085 was repealed and replaced with Ministerial Order M195 was put in place. This new Order gives landlords the right to serve tenants with Ten Day Notices to End Tenancy for Unpaid Rent or Utilities , providing the missed rent payments did not occur during the state of emergency which was between March 18, 2020 and August 17, 2020. As some of the rent became due prior to March 18, 2020, I find that the Landlord is authorized to end this tenancy on that basis of that overdue rent.

Section 46(4) of the *Act* stipulates that a tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice to End Tenancy. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I will grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant.

I note the Landlord has not applied for a monetary Order for unpaid rent, and one has not been considered.

Conclusion

The Landlord has been granted an Order of Possession that is effective two days after it is served upon the Tenants. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 17, 2020

Residential Tenancy Branch